IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.5283 OF 2006.
IN
FIRST APPEAL NO.3093 OF 2006.

Pravin Damodardas Mavani. ... Applicant.
Versus.
Damodar Bhavan Coop.Housing Society Ltd.
and others. ... Respondents.

Shri Anil Singh i/by Shri D.R.Shah for the Applicant.

Shri L.M.Acharya for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 23rd February, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant and the Advocate for the 1st Respondent. The operative part of the decree passed by the trial Court reads thus:

> . "The suit is decreed with costs as follows:
>
> . Defendant No.2 do execute a conveyance of the suit property to the extent of his share in the suit building and the land in favour of the plaintiff and to deliver all the documents of title to the plaintiff by executing a registered conveyance in favour of the plaintiff without affecting the right of the defendants to develop the old structures by consuming the balance FSI presently available.

. Defendant No.2 is directed either to become member of the society or to ask the tenants from the old tenements to become members and to pay the outgoings as may be determined by the society.

. Defendant No.2 is perpetually restrained from making any addition or alterations in the existing building presently occupied by the members of the Plaintiff and is further restrained from constructing any additional structures beyond the balance FSI.

. It is made clear that the right of the Defendants to construct additional buildings on the suit land for consumption of balance FSI presently available will not be effected by this decree or perpetual injunction.

. Defendant No.2 shall bear his own costs and shall pay costs of the Plaintiff.

. A decree shall be drawn up accordingly.

. If defendant No.2 fails to execute conveyance within two months from the date of

decree, the Plaintiff shall apply for appointment of court commissioner and the conveyance shall be executed through the court commissioner.

. On oral request time of 30 days is granted for bringing stay order."

The Advocate for the Applicant (the Defendant No.2) reiterates that the Applicant is not willing to execute conveyance in terms of the decree though the decree provides that even after execution of the conveyance, right of the Applicant to develop the old structure by consuming balance FSI will not be affected. Thus without complying with the statutory obligation under the Maharashtra Ownership Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963 and the Rules made thereunder, the Applicant desires to carry on further development. Therefore, ad-interim order which is granted on 8th January 2007 deserves to be continued.

2. Accordingly the Application is disposed of by directing that there will be interim relief in terms of clause 3 of the order dated 8th January 2007.

Judge.